

SB 472 Testimony

Good Morning, Chairman Robertson and members of the committee. Thank you for allowing me to speak in support of SB 472. My name is John Matonich and I am the President & CEO of ROWE Professional Services Company, headquartered in Flint. I am also a past state president of the Michigan Society of Professional Surveyors (MSPS) here in Lansing and a past national president of the National Society of Professional Surveyors (NSPS) in Washington, DC.

SB 472 is a proposed amendment of the State Survey and Remonumentation Act (SSRA, Act 345 of 1990) and is intended to clarify and modernize the act, to remove some ambiguities, and to allow the Remonumentation Program to more effectively meet the needs of the citizens of Michigan, by:

A. Restoring the county option of including center quarter corners and closing quarter corners.

B. Providing for the county option of omitting very low-value corners from the county plan.

C. Restoring the county option of densifying, upgrading, and/or maintaining active geodetic control.

D. Restoring the Remonumentation Commission as provided for in the original 1990 act.

E. Clarifying the various roles of the County Representative, Grant Administrator and Peer Review Group.

BACKGROUND

The SSRA (Act 345) and the companion funding bill (Act 346) were passed in the 1990 legislative session, and signed by outgoing Governor James Blanchard. The Remonumentation Commission was appointed by Governor John Engler in 1991. During 1991-1992, the Commission and staff drafted and adopted the Model County Plan and the required administrative rules. Each county adopted a County Remonumentation Plan, based on the Model Plan, but adapted to the specific needs and individual circumstances of each county.

During 1991-1992, the Commission and staff asked and answered dozens of policy and procedure questions. Funds collected under Act 346 were deposited into the Michigan State Survey and Remonumentation (MSSR) Fund, but grants to counties were not awarded until early 1993. January 1st of 1993 was the start of the fully functional Remonumentation Program.

One of the policy questions related to the scope of the work authorized by the Act. Section 8 (2) of Act 345 specified that each county plan would “provide for ... the monumentation or remonumentation of the entire county within 20 years ...” Considerable controversy has resulted from the multitude of interpretations of that simple phrase over the years.

REASONS FOR SB 472

Part A - One then seated commissioner from northern Michigan voiced opposition to including center quarter corners. After inquiry and careful analysis, it was determined by staff and agreed to by the commission that “centers” could be included as “property controlling corners” but would not be required if a county chose not to. Thereafter, most county plans in southern Michigan included “centers”, most of the plans in northern Michigan did not. It is important to note that no commissioner, no staff member, no state or county official ever questioned the inclusion of “closing quarter corners” and that virtually all counties included these corners in the county plan.

In November of 2009, effective for grant year 2010 and subsequent years, the Office of Land Survey and Remonumentation (OLSR) issued **Memorandum 15** in response to legal advice from the Assistant Attorney General who was advising OLSR at that time. It was the opinion of the AAG that Act 345 only authorized using grant money for remonumentation of the corners originally monumented by the federal government. Memorandum 15 removed virtually all centers and closing quarter corners from the program.

This caused a disruption of the county remonumentation plans for nearly every county, because of the exclusion of closing quarter corners. The counties in the southern half of the state felt the detrimental effects much more severely, because of the exclusion of center quarter corners as well.

There is a strong sense of resentment caused by **Memorandum 15**, especially so in the southern counties. Program administrators in these counties feel that (with the abbreviated scope) Remonumentation is no longer meeting their county’s needs. The foremost reason for amending Act 345 is to reverse the effects of **Memorandum 15**.

Part B – For the Remonumentation Program to fulfill its purpose, it is important that every meaningful corner in the grid be included. For fiscal responsibility reasons, it is equally important that meaningless corners be excluded. MSSR grant funds are public dollars that should be spent only where there is a commensurate public benefit.

The current protocol is that **every corner** that was originally monumented by the federal government must be remonumented under Act 345. Unfortunately, there are thousands of such corners that have no contemporary function, that control no modern title lines. Remonumentation of such corners would

provide no real public benefit, thus would be a poor use of grant funds. Still, the policy of OLSR is that Act 345 **requires** that these corners be remonumented.

As an example, Isle Royale was surveyed by the federal government surveyors, but is virtually entirely owned by the federal government now. There are more than 700 government survey corners on the island. It would cost well over \$1 million to complete the remonumentation there and yet would serve little public benefit.

But the result of such an investment would be of no real value to any citizen of Michigan. Nobody would benefit but the contract surveyor. This is but one example; there are many others. Every county has meaningless corners, the restoration of which would not benefit the public.

The staff at OLSR does not have the time or resources to decide which corners are important and which are of minimal value. This should be left to the counties to determine, as detailed in each county's plan.

Part C - In late November of 2010 **Memorandum 16** was issued by OLSR. Following a protest from the counties, it was revised in early December. The final amended and appended version was released on May 31st, 2011. Memorandum 16 contains quite a number of restrictive provisions that many counties find objectionable. Here I will discuss only one of them.

Many of the county Remonumentation programs in Michigan have partnered with MDOT to partially cover the costs of purchasing, installing and maintaining a CORS (Continuously Operating Reference Station) within their county. Having a CORS facility nearby greatly enhances the efficiency and accuracy of GPS survey measurements. The benefits from a CORS installation are available to MDOT surveyors, to Remonumentation surveyors, and to surveyors serving the general public, at no charge.

This type of common sense inter-governmental cooperation is exactly what Governor Snyder has been advocating for and encouraging. In the case of CORS, the cooperation dates back to about 2002, a long cooperative program.

Unfortunately, **Memorandum 16** prohibits such cooperation. This has a double-barrel damaging effect.

1. Counties that would like to densify the network with program dollars are prohibited from doing so.
2. Counties that already have CORS installations are forbidden from using grant monies for routine maintenance and operation. Some such stations are now off-line, no longer functioning, for lack of a relatively small expense.

Part D - The Remonumentation Commission was abolished by Governor John Engler as part of Executive Reorganization Order No. 1996-2. Many counties would like for the Remonumentation Commission to be restored. There are two main reasons:

1. For many years, the Remonumentation Program was operated as a cooperative venture between the State of Michigan and the individual counties. Memorandum 15 signaled a dramatic change to an authoritarian top-down style of management. Memorandum 16 confirmed that with an exclamation point. The program would benefit greatly if another set of eyes could see and comment on new policy

initiatives before they are launched. A restored Remonumentation Commission could (and should) serve that function.

2. Currently there is little to no conflict-resolution mechanism. If there is an irreconcilable disagreement, for instance between adjoining counties, or within a county program, or between a county program and OLSR, the Remonumentation Commission could (and should) act as an intermediary.

Part E - At the county level, the County Surveyor/Representative oversees the technical aspects, the Grant Administrator handles the business end, and the Peer Review Group has an important role in reviewing the documentation for correctness and completeness. However, only the County Surveyor/Representative is defined in the Act.

All of these participants are typically compensated for their services. If grant funds are being used for them, the law should explicitly define the roles of the Grant Administrator and Peer Review Group.

Memorandum 16 prohibits using grant money to pay for a number of necessary field supply items, such as Carsonite (fiberglass) witness posts and county-specific witness tags, as well as the CORS installations already mentioned. OLSR justifies this by saying that items that are not mentioned in the Act are not allowable expense items. Thus far, OLSR has had selective amnesia regarding the compensation for Grant Administrators and Peer Group members.

We understand the Department (LARA) has some concerns and we would respond to recent correspondence from Frank Waters of LARA as follows:

1. The SSRA was passed to support the filing of corner records pursuant to the requirements of the Corner Recordation Act, 1970 PA 74, MCL 54.201 to 54.210d (CRA). The SSRA supports this concept by requiring that the work completed with SSRA funds include the filing of corner records pursuant to the CRA. Thus for the SSRA to be a successful program it must be congruent with the CRA. Many of the proposed amendments sought by this bill are inconsistent with the CRA.

Senator Walker intends to introduce a trailer bill which would bring the Corner Recordation Act into line with the changes being sought in SB 472, making both bills consistent.

2. Reinstating the commission adds an additional bureaucratic level to the administration of the grant program that will delay the processing of grants and associated payments. Having to wait for the commission to approve grants and authorize payments will change the process and hamper the flow of funds to the

counties. The technical knowledge required to set-up and implement the program is no longer required. As needed, the department actively participates in a work group consisting of county representation and individuals from the land surveying community.

Approving grants and authorizing payments is not what the reconstituted Remonumentation Commission is for. Those are administrative functions. The Remonumentation Commission is needed to review new policy initiatives, and guard against bad ones. Memorandum 15 and Memorandum 16 have created very bad policy that requires the counties to spend huge sums of public grant money for no productive purpose. It is important to note that the people of the State of Michigan do not benefit in any way from these unnecessary expenditures.

Currently approvals and the distribution of agreements and payments happen within days of the staffs' review being completed. Under the commission once staff reviews are completed for the grant applications the agreements and start-up payments will have to be held until the commission meets and approves the grant applications and authorizes the start-up payments. With the commission meeting only twice a year it is likely the grants will not be approved and agreements sent to counties until April, currently agreements are sent to counties in February.

This legislation does not seek to grant to the commission the right to approve grants, but merely to act as an oversight of policy decisions coming from the office.

Similarly with the current process a majority of grants are closed out and final payments are distributed between March and June. Under the commission once staff reviews are completed the grants will not be able to be closed out and final payments distributed until the commission meets and approves the grants for close out and authorizes the final payments. With the commission meeting only twice a year most grants will not be closed out until August or September.

Again, a restored Remonumentation Commission will be for policy review. It will not have an administrative function, except to possibly assure that policy is being properly followed.

3. Expanding the program, i.e., adding classes of corners, adding coordinate establishment for corners, adding funding for continuously operation reference stations (CORS), etc., extremely hinders the original goal of the program which is to restore, rehabilitate, and remonument previously monumented corners within 20 years. Increasing the uses for the fund dilutes its effectiveness.

The items identified as "expanding" or "adding" were integral parts of the program for 17 years, from the beginning of 1993 to the end of 2009. By virtue

of Memorandum 15, these items were removed from the program. The result of Memorandum 15 is that the program no longer properly serves the interests of most of the citizens of Michigan, but requires huge expenditures that do not serve the interests of any citizen at all. This amendment does not dilute effectiveness at all. It allows counties to use grant monies where they will be effective, and to forego expenses that will not serve the interests of the citizens.

The SSRA was enacted with the belief that there were approximately 165,200 remonumentation corners within the state to be perpetuated. We estimate, based on the annual corner counts reported by the counties in their 2012 completion reports, that there are approximately 226,000 total remonumentation corners in the state. This total is approximately 35% more than originally contemplated in 1990.

The corner counts from 2012 assume the current protocol that each and every corner ever monumented by the federal government must be remonumented under Act 345. There are thousands upon thousands of such corners that serve no modern function, that control absolutely no titles lines. These are corners that will never serve the interests of the people of Michigan. Spending grant money for the remonumentation of such corners is improper at current times. The real number of actual, functional, necessary corners that should be remonumented is much closer to the original estimate.

The completion of the 2012 grant cycle wrapped up the 20th year in which grants were distributed to counties. At that time 129,593 remonumentation corners had been completed making approximately 60% of the remonumentation effort across the state complete. We estimate it will take at least another 20 years to complete the remonumentation of the entire state. Expansion would greatly add time to the completion of remonumentation, possibly making it an indefinite program. If counties do not complete remonumentation they will not transition into a maintenance program nor be required to perpetuate the corners previously remonumented which is contrary to the intent of the program.

There is no expansion. This amendment would restore the program to the way it functioned productively for 17 years, allowing the counties to remonument the corners that are of value to that county's citizens, and to omit the corners that are of little to no value to them.

The perpetual "maintenance program" is intended to assure that the deterioration of corners that occurred prior to remonumentation never occurs again. In the case of Keweenaw (and several other small counties) that maintenance cannot begin until all of the meaningless corners are remonumented. This will delay the maintenance program for many decades, and deterioration of the meaningful corners will be the inevitable result.

4. Portions of the bill are inconsistent with an equitable application of the program across all counties in Michigan and grant authority to the commission to make decisions that are arbitrary and capricious.

What the staff at LARA describe when they say “equitable application” is that the scope of the program should be exactly the same in every part of every county across the entire State of Michigan, regardless of local conditions or needs. If the northern counties don’t feel the need to remonument section centers, then no county should do centers. If some counties do not have CORS stations, then no counties should have them. If any county chooses not to establish global coordinates for corners, than no county should do so.

Imposing a one-size-fits-all protocol assures that the program will not fit any county very well at all. Is it not obvious that urban areas differ from suburban? That farm country is quite different from wilderness? The profound differences in population density and land-use intensity demand that the scope of the program be tailored to local conditions.

The current protocol is not designed to best serve the interests of the citizens of Michigan.

5. The appellate duties being added to the commission are intended to give them the ability decide matters of legal precedent. Specifically, Section 6(3)(A) and (B), are representative of property line disputes which are matters that are heard by the circuit court and 6(3)(C) are matters that are addressed by the Administrative Procedures Act, 1969 PA 306, and heard through MAHS.

The proposed duties described relate to the proper physical location of section corners. The decision involved is the same question that individual remonumentation contractors deal with routinely. No legal precedent or property line dispute is involved. If these issues can only be properly resolved in circuit court, then the entire Remonumentation Program has been improper from the start.

When a Zoning Board of Appeals reviews an appeal of an administrative zoning decision, are they treading on forbidden territory? There are dozens, maybe hundreds of instances in state and local government where boards and commissions hear appeals at the administrative level.

6. If the program is amended as proposed, it is our opinion that it will no longer be a viable program. The only counties seeing benefit from this bill are the more developed counties with the greatest funding and the greatest potential

for additional classes of corners. Remonumentation of the entire state will not be completed due to a trickle down effect in the funding mechanism thus producing inadequate funds for the less developed counties.

The amendment restores the program to its function for the first 17 years, from 1993 to 2009. It was a viable program then; it will be a viable program in the future with this amendment. Remonumentation of the corners that actually truly serve the citizens of Michigan should be the goal. This amendment will assure that.

7. The proposed legislation does not define terms that are unique to this legislation, i.e., definitions for remonumentation and monumentation.

The definitions do exist in the recently adopted administrative rules and with some modification can be added to SB 472.

Once again Mr. Chairman, thank you for the opportunity to address the committee.